

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

GRUPO PETROTEMEX, S.A. DE)	
C.V. and DAK AMERICAS LLC,)	Civil Action No. 16-cv-02401 SRN/HB
)	
Plaintiffs,)	DEFENDANT POLYMETRIX AG’S
v.)	MOTION TO DISMISS PLAINTIFFS’
)	COMPLAINT PURUSANT TO
)	FED.R.CIV.P. (12)(b)(1)
POLYMETRIX AG,)	
)	
Defendant.)	
)	
_____)	

Defendant Polymetrix AG (“Polymetrix”) moves the Court for an Order dismissing the Complaint of Plaintiffs Grupo Petrotemex, S.A. de C.V. and DAK Americas LLC’s (“GPT/DAK”) for lack of subject matter jurisdiction.

This Court lacks subject matter jurisdiction because on July 12, 2016 when GPT/DAK filed their Complaint, there was no real and immediate injury or threat of injury that was caused by Polymetrix. Accordingly, there is no “case” or “controversy” that is justiciable under Article III of the Constitution to warrant the declaratory relief that GPT/DAK effectively seeks by way of its Complaint.

Since the Poland and China plants are located outside the U.S., the only legal basis for GPT/DAK to assert infringement of the patents-in-suit by Polymetrix in connection with these plants, and the only way the trier of fact could possibly find infringement would be if: 1) product manufactured by these plants was “made by a process patented in the United States” and imported into the U.S.; and 2) Polymetrix induced such

importation. 35 U.S.C. § 271(g). In other words, the “infringing act” under § 271(g) with respect to U.S. method patents is the importation of product made by the process, not the performance of the process steps. Thus, without any importation, there can be no infringement liability under § 271(g) as a matter of law.

There has been no importation into the U.S. of PET manufactured at the Poland plant and the China plant was not in commercial operation at the time of GPT/DAK’s Complaint. It has been almost two years since GPT/DAK filed their Complaint and there has been no importation of PET into the U.S. from the Poland plant and the China plant is still not in commercial operation. As a result, no case or controversy of sufficient “immediacy” or “reality” existed as of the day GPT/DAK filed their Complaint to create a justiciable controversy under Article III of the Constitution. Nor is there a case or controversy today because nothing has changed in that regard during the 2 years following that date.

This Court also does not have subject matter jurisdiction with respect to any offers Polymetrix may have made to supply equipment, designs or engineering services to either build an EcoSphere™ plant in the U.S. or to retrofit an existing PET manufacturing plant in the U.S.

Finally, even if GPT/DAK could establish an “injury-in-fact” that is “fairly traceable” to Polymetrix’s conduct in connection with the Poland and China plants, this “injury” is not redressable by a favorable decision of the Court. First, because there has been no importation from the Poland plant and/or the China plant, and because any unaccepted “offers for sale” do not constitute an infringement, there will be no damages

suffered by GPT/DAK. This leaves injunctive relief as GPT/DAK's only potential remedy. Thus, assuming for argument sake that GPT/DAK's subjective fear of the speculative and hypothetical importation of PET into the U.S. made at the Poland or China plants created a justiciable case or controversy, the Court is without power to prevent that importation through injunctive relief.

Polymetrix makes this motion based on all the Declarations of Martin Muller, Andreas Christel, Todd A. Noah, the supporting memorandum, the arguments of counsel, and all other records, filings, and proceedings herein.

Dated: March 7, 2018

Respectfully Submitted,

DERGOSITS & NOAH LLP

By: /s/ Todd A. Noah

Todd A. Noah (*Pro Hac Vice*)

Igor Shoiket (*Pro Hac Vice*)

Stephen H. Youtsey (*Pro Hac Vice*)

One Embarcadero Center, Suite 350

San Francisco, CA 94111

(415) 705-6377

tnoah@dergnoah.com

FAEGRE BAKER DANIELS LLP

Theodore M. Budd, MN Bar No. 314778

Timothy M. Sullivan, MN Bar No. 391528

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-3901

(612) 766-7000

ted.budd@faegrebd.com

Attorneys for POLYMETRIX AG